**PP**

**v.**

**TAN ENG KAR**

HIGH COURT MALAYA, TEMERLOH
RAMLY ALI JC
[CRIMINAL APPEAL NO: 41-26-2000]
20 JULY 2001

***CRIMINAL PROCEDURE:*** *Trial - End of prosecution's case - Whether case must be established beyond reasonable doubt - Criminal Procedure Code s. 180*

***CRIMINAL LAW:*** *Common Gaming Houses Act 1953 (Malaysia) - Section 4A(a) - Whether evidence properly considered*

***EVIDENCE:*** *Opinion evidence - Expert opinion - Grounds and reasons for opinion - Whether necessary*

This is an appeal by the deputy public prosecutor against the decision of the magistrate made on 25 May 2000 whereby the respondent who was charged under s. 4A of the Common Gaming Houses Act 1953 ('the CGHA') was acquitted and discharged without calling for his defence at the end of the prosecution's case.

The prosecution relied solely on P3 (a small book with a piece of paper containing figures). It was found by the arresting officer from the respondent's pocket at the time of the arrest. The prosecution relied on P3 to establish the presumption under s. 11(1)(c) of the CGHA.

The grounds of appeal are as follows:

(a) that the magistrate was wrong in holding that the prosecution had failed to prove the charge beyond a reasonable doubt at the end of the prosecution's case;

(b) that the magistrate was wrong in failing to take into consideration all the evidence which have proved each and every ingredient of the offence under s. 4A of the CGHA.

(c) That the magistrate was wrong for not accepting the identity of the exhibit (P3) and for not accepting the evidence relating to the signature and the discrepancy in the dates in P3 and P13.

(d) That the magistrate was wrong for disputing the contents of the report of the gaming expert even though the said report was served on the

respondent in accordance with s. 399 of the CPC and that the respondent had not made any application to call the expert to testify in court.

**Held:**

**[1]** The offence was said to have been committed on 27 October 1996 that is before 31 January 1997 and the respondent was first charged in court on 20 March 1997 after 31 January 1997. It is clear therefore that the standard of proof to be applied at the close of the prosecution's case in this case is that of beyond a reasonable doubt. No doubt the standard of beyond a reasonable doubt is higher than a *prima facie* case, the burden of proof on the prosecution is heavier. Therefore the court, at the close of the prosecution's case is entitled to assess the veracity and credibility of the evidence of witnesses. (p 605 e)

**[2]** The magistrate was correct to doubt the identity of P3 since there were discrepancies between P3 and P13 ('the gaming expert's report'). (p 606 e)

**[3]** The fact that P13 was served on the accused 10 days before the trial in compliance with s. 399 of the CPC and that the accused as well as the court did not object to it and did not call the expert to give evidence in court did not relieve the prosecution of the burden to establish its case beyond a reasonable doubt at the close of the prosecution's case. The expert evidence was part and parcel of the prosecution's case, and it was therefore the duty of the prosecution to ensure that the evidence, either oral or documentary (in the form of a report) carries significant weight to assist the prosecution in establishing its case beyond a reasonable doubt at the end of the prosecution's case. (p 610 h-i)

**[3a]** Even though the prosecution had served P13 on the respondent pursuant to s. 399 of the CPC, the prosecution was not precluded from calling the gaming expert to prove its case in the ordinary way, if it felt that the report itself was insufficient to establish its case beyond a reasonable doubt. (p 611 c)

**[3b]** Since the gaming expert was not called to give evidence in court, the prosecution must have been satisfied with the strength of P13 to support its case without calling for personal attendance of the expert. P13 however is just a bare opinion, too brief and contained no explanation or grounds given as to how the expert formed such an opinion. It was therefore insufficient to assist the magistrate in determining whether P3 was in fact in relation to an illegal lottery. (p 609 g)

*[Appeal dismissed.]*

**Case(s) referred to:**
*Ang Chwee Keong v. Regina [1955] MLJ 36* ***(foll)***
*Chin Sen Wah v. PP [1958] 24 MLJ 154* ***(refd)***
*Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645* ***(foll)***
*Mohammed Hassan v. PP [1998] 2 CLJ 170* ***(foll)***
*Ong Yap Chang v. PP [1962] 28 MLJ 46* ***(refd)***
*PP v. Lee Ee Teong [1953] MLJ 244* ***(refd)***
*PP v. Tan Kian Ho [1998] 4 J Cr* ***(refd)***
*Saw Thean Teik v. R [1953] MLJ 124* ***(foll)***
*Sim Ah Seng v. Rex [1951] MLJ 150* ***(refd)***

**Legislation referred to:**
Common Gaming Houses Act 1953, ss. 4A(a), 11(1)(c)
Criminal Procedure Code, ss. 180, 399
Criminal Procedure Code (Cap. 21), s. 427
Evidence Act 1950, s. 91

*For the appellant - Mohd Sharif Abu Samah DPP*
*For the respondent - Richard Bong; M/s Bong & Co*

*Reported by Mariette Peters-Goh*

## JUDGMENT

**Ramly Ali JC:**
This an appeal by the learned DPP against the decision of the learned magistrate Temerloh made on 25 May 2000 whereby the respondent, who was charged under s. 4A(a) of the Common Gaming Houses Act 1953, was acquitted and discharged without calling for his defence at the end of the prosecution's case.

The respondent in this case was charged as follows:

> Bahawa kamu pada 27.10.96 jam lebih kurang pukul 1.05 petang di hadapan rumah No. 205, Kampong Baru Triang di dalam daerah Temerloh di dalam Negeri Pahang telah didapati tolong menolong menjalankan Loteri Awan iaitu judi ekor haram empat angka, iaitu dari angka 1000 hingga 10,000. Oleh itu kamu telah melakukan satu kesalahan dan boleh dihukum di bawah seksyen 4A(a) Akta Rumah Perjudian Terbuka No. 26/53 (Pin. Akta 755/90).

From the charge sheet, it appears that the respondent was arrested on 27 October 1996 and was first charged in court on 20 March 1997. He claimed trail to the charge. At the trial, the prosecution had called three witness ie, the arresting officer, the officer-in-charge of the exhibits and another officer who took photographs of the respondent's house. At the end of the prosecution's case, the learned magistrate ruled that the prosecution had failed to prove the charge beyond a reasonable doubt against the respondent and

accordingly acquitted and discharged the respondent without calling for his defence.

The learned DPP, not being satisfied with the said decision, filed an appeal on the following grounds:

a) that the learned magistrate was wrong in holding that the prosecution had failed to prove the charge beyond a reasonable doubt at the end of the prosecution's case;

b) that the learned magistrate was wrong in failing to take into consideration all the evidence which have proved each and every ingredient of the offence under s. 4A(a) Common Gaming House Act 1953;

c) that the learned magistrate was wrong for not accepting the identity of the exh. (P3) which was identified by PW2 and PW3; and for not accepting the explanation given by PW3 relating to the signature on (P3) and the discrepancy in the dates in (P3) and (P13); and

d) that the learned magistrate was wrong for disputing the contents of the report by the gaming expert eventhough the said report was served on the respondent in accordance with s. 399 of the Criminal Procedure Code (CPC) and the respondent had not made any application to call the expert to testify in court.

**Whether The Standard Of Proof "Beyond A Reasonable Doubt" Applies At The Close Of The Prosecution's Case In This Case**

In this case, the offence was alleged to have been committed by the respondent on 27 October 1996 and he was first charged in court on 20 March 1997. The present s. 180 CPC provides that when the case for the prosecution is concluded, the court shall consider whether the prosecution has made out a *prima facie* case against the accused. If the court finds that the prosecution has not made out a *prima facie* case against the accused, the court shall record an order of acquittal, otherwise, the court shall call upon the accused to enter his defence. That is the present position relating to the standard of proof required at the close of the prosecution's case. This provision is a result of an amendment *vide* Act A979 which came into effect on 31 January 1997. In *Dalip Bhagwan Singh v. Public Prosecutor* [1997] 4 CLJ 645, the Federal Court held that:

> Moreover, although the CPC (FMS Cap 6) has been amended to include the test of *prima facie* case, the amendment would apply only to an act or omission constituting a criminal offence committed on or after 31 January 1997, and not to any such act or omission before 31 January 1997. For such act or omission committed before 31 January 1997, the test laid down in *Arulpragasan*, ie, that of proof beyond a reasonable doubt at the close of the

prosecution's case, would still apply because the amendment is not couched in terms, either expressly or by necessary implication, which would make it retrospective in operation.

Assuming that the amendment to the CPC had been, expressly or by necessary implication, made to apply retrospectively, it would have run foul of Art 7(1) of the Federal Constitution because if an act or omission before 31 January 1997 cannot evidentially be proved at any time to have been committed beyond a reasonable doubt at the close of the prosecution's case, the perpetrator of the act or omission would not be called for his defence and therefore would not be punishable any more. But if the act or omission in question not punishable in the way stated above can be proved by way of a *prima facie* case at the close of the prosecution's case (a much lesser burden of proof), then the said perpetrator will have his defence called. He will then be in jeopardy of failing possibly to throw or cast a reasonable doubt on the prosecution's case, and such failure will be punished in a manner as provided by law. Article 7(1) of Federal Constitution would thereby have been infringed, though very clearly in spirit of not by letter.

In the present case the offence was said to have been committed on 27 October 1996 ie, before 31 January 1997 and the respondent was first charged in court on 20 March 1997, after 31 January 1997. On the above Federal Court's decision (*Dalip*'s case) it is clear that the standard of proof to be applied at the close of the prosecution's case in this case, is that of beyond a reasonable doubt. No doubt the standard of beyond a reasonable doubt is higher than a *prima facie* case. The burden of proof on the prosecution is heavier. Therefore the court, at the close of the prosecution's case, is entitled to assess the veracity or creditability of evidence of witness (see: *Dalip*'s case).

**Whether The Learned Magistrate Had Taken Into Consideration All The Relevant Evidence**

The prosecution had called three witness (PW1, PW2 and PW3), all of whom were police personels. However, only PW2 and PW3 are material witnesses. Other than that, the prosecution had also tendered two relevant exhibits, namely - a small book which was alleged to contain figures relating to illegal lottery (P3); and a report by the Gaming Expert (P13). There is no other evidence available. In his grounds of judgment it appears that the learned magistrate has taken into consideration all those relevant evidence in coming to his decision at the close of the prosecution's case.

**Status Of The Exhibit – P3**

The exh. P3 is a small book with a piece of paper containing figures. It was found by the arresting officer from the respondent's pocket at the time of the arrest. According to the gaming expert's report, the exh. P3 is: "satu (1) buku kecil terdapat sehelai kertas tercatat dengan angka-angka nombor". The

prosecution relied solely on P3 to establish the presumption under s. 11(1)(c) of the Common Gaming House Act 1953. Without the exh. P3, the whole cases will collapse. In his grounds of decision, the learned magistrate was doubtful as to the identity of the exh. P3. The relevant part of his decision is as follows:

> Terdapat pelbagai keraguan tentang identiti barang kes ie, exh. P3. Antara keraguan-keraguannya adalah:
>
> a) menurut saksi PW2 beliau ada menerima 1 buku kecil yang bertandatangan di kulit luar serta bertarikh 27.10.92 dari C/Insp. Saidi ie, PW3. Manakala saksi PW3 hanya menandakan A1 pada eks. P3. Apabila dirujuk kepada PW3 eks. P3, beliau menyatakan tidak tahu siapa yang menandatanganinya tetapi percaya ia ditandatangani oleh pakar judi. Ekshibit P3 hanya diserahkan kapada pakar judi pada 19.11.96 sepertimana yang dinyatakan oleh PW2 dan eks. P13. Persoalannya adakah ini barang kes yang dirampas oleh PW3 sedangkan P3 ini diterima oleh PW2 sudahpun ditandatangani di luarnya.
>
> b) Pada eks. P3 terdapat tarikh 27.10.92, akan tetapi pada P13 dicatatkan 27.10.96.

After going through the notes of evidence, I tend to agree with the learned magistrate as to the doubt on the identity of the exh. P3. In his examination -in-chief as well as cross-examination, PW2 had said that on 27 October 1996 at about 2.40pm, while being on duty as AIO at Triang Police Station, he received the exh. P3 from PW3. He said in evidence:

> Saya terima daripada Insp. Saidi di Balai Polis Triang. Saya terima: - 1 buku kecil yang bertandatangan di kulit luar dan bertarikh - tarikh di dalam 27.10.92

In other words, when PW2 received the exh. P3 from PW3, there was already a signature on the cover of the exh. P3. PW3 in his evidence admitted that he only marked "A1" on the cover of P3. He did not sign on it. He did not know who signed the exh. P3. He believed it was signed by the gaming expert. The evindence shows that the exh. P3 was only given to the gaming expert on 19 November 1996, while the said signature (which PW3 believed have been signed by the gaming expert) was already there on 27 October 1996 when PW2 received the exh. P3 from PW3. More doubt was created by the discrepancy as to the dates on the exhs. P3, P2, P12 and P13 (the gaming expert's report). The date stated the cover of the exh. P3 is "27.10.92" while in P2 (search list) it was stated that P3 was dated 27 October 1996. In P13 (gaming expert report) at para 3.2, the date referred to was 27 October 1996. The police report (P2) lodged by PW3 (the arresting officer) 40 minutes after the respondent was arrested stated that the respondent was arrested on "27 October 1997". While in actual fact, the arrest was made by PW3 on

27 October 1996. On that premise, I feel that the learned magistrate was correct when he expressed his doubt on the identity of the exh. P3, eventhough it was identified by PW2 and PW3 in court.

The learned DPP also argued that the learned magistrate was wrong for not accepting the explanation given by PW3 relating to the signature on the exh. P3 and the dates in P3 and P13. In his cross-examination, PW3 said:

> Tarikh tangkapan pada 27.10.96.
>
> P2 dirujuk. Typing error pada 27.10.97 sebenarnya 27.10.96. P3 dirujuk bersama P12.
>
> Pada buku ditulis tarikh 27.10.92. Tarikh dalam P3 27.10.92. Tarikh bercanggah dengan P12.
>
> Pada muka kulit P3 saya tak tahu siapa tandatangan. Dipercayai ditandatangani oleh pakar judi.

In re-examination, PW3 said:

> P3 dan P2 dirujuk.
>
> Tarikh pada P3 27.10.92. Tarikh pada P12 27.10.96. Kesilapan pada P12. Sebenarnya pada 27.10.92.

These are the so - called explanation given by PW3 to enlighten the discrepancies. From the records alone, one can decide whether the explanation can be accepted or not. Personally, I don't think the explanation given was sufficient to clear the air. In fact, his explanation regarding the signature on P3 ie, he did not know who signed it and he believed it was signed by the gaming expert, created more doubt as to the identity of P3. I don't blame the learned magistrate for not accepting the explanation by PW3. The learned magistrate was having the opportunity of seeing and hearing the witness PW3. He was in a better position to assess the evidence given by PW3. It is unsafe to interfere on his findings of facts, especially when it involves a question of creditability of the witness and a question whether he believes or disbelieve the witness.

**Status Of The Gaming Expert's Report - P13**

The learned DPP also argued that the learned magistrate was wrong for disputing and not accepting the gaming expert's report. He argued that the report was tendered pursuant to s. 399 CPC ie, by serving it on the respondent ten days before the trial and the respondent did not try to make any application to call the gaming expert as provided under the section, if the respondent felt that the report was not satisfactory. By not making any application to call the gaming expert to testify in court, the learned DPP contended that the

respondent and the court are deemed to have accepted the contents of the report. In his grounds of judgment, the learned magistrate said:

> Laporan pakar judi P13 hanya menyatakan tarikh 27.10.92 dipercayai menandakan tarikh 27.10.96. Laporan pakar judi ini hanya tertulis begitu tanpa memberi sebarang alasan bagaimana andaian ini boleh diperolehi.

The gaming expert was not called to give evidence in court. The prosecution only tendered the report and marked as exh. P13. In the said report the gaming expert made the following findings:

> Setelah memeriksa exhibit-exhibit tersebut, saya dapati perkara-perkara berikut:
>
> **EXHIBIT A1**
>
> 3.1. Ianya merupakan catatan asal dan salinan rekod pertarohan bagi nombor-nombor 10,000. Sebanyak empat (4) nombor dipertarohkan dengan nilai RM5.00.
>
> 3.2. Tarikh pertarohan yang tercatat dalam buku tersebut adalah 27.10.92. Tarikh dipercayai menandakan 27.10.96, is juga adalah bersamaan tarikh tangkapan yang mana juga bersamaan tarikh pertarohan Magnum Corporation, Sport TOTO, Pan Malaysian Sdn Bhd dan Singapore Race Day.
>
> **KESIMPULAN**
>
> Setelah mengkaji dengan teliti exhibit tersebut, berikut adalah kesimpulan pemeriksaan:
>
> 4.1. Pada pendapat saya, sesiapa yang memiliki barang kes tersebut adalah dikatakan sebagai tolong-menolong menjalankan loteri awam haram.

It appears form the report (P13) that the gaming expert had just given his bare opinion without giving any reason or detail explanations as to how he came to that finding. For an offence under s. 4A(a) of the Common Gaming Houses Act 1953, a gaming expert report is very vital to assist the court in determining whether the exhibits found to be in possession of the accused person relate to illegal lottery activity and thus to invoke the presumption under s. 11 of the same Act.

In *Ang Chwee Keong v. Regina* [1955] MLJ 36, Spencer Wilkinson J held:

> It was the duty of the Magistrate in this case to look at these documents and decide for himself, of course with the assistance of the expert, whether or not those documents were accounts, memoranda or records of stakes or wagers relating to a lottery within the meaning of section 11 of the Ordinance. He appears to me to have relied entirely upon the bare expression of opinion of the expert ... .

As Brown Ag. CJ, Singapore, said in the case of *Sim Ah Seng v. Rex* [1951] MLJ 150:

> But a bare expression of his (the expert's) opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is the duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not the Court.

In another case, *Chin Sen Wah v. Public Prosecutor* [1958] 24 MLJ 154, Rigby J held:

> Where an accused person is charged with the offence of assisting in the carrying on of a public lottery, contrary to section 4(1)(c) of the Common Gaming Houses Ordinance 1953, the ultimate responsibility of determining whether or not there is a public lottery rests with the Magistrate. He does that with the assistance of such experts as may be called before him to explain what the lottery is, how it is run, and how the facts adduced and the exhibits produced in the case before him establish in the opinion of the expert the existence of a public lottery. But it is for the Magistrate to form his decision in the light of the evidence given by the expert.

In that case (*Chin Sen Wah*) the conviction was quashed and sentence set aside on appeal by the High Court on the ground that no attempt was made by the gaming expert to explain in detail the nature of the exhibits found and the grounds on which he based his opinion that those exhibits belonged either to an organiser or collector of bets of 100 and 1,000 numbers lottery.

In our present case, the gaming expert was not called to give evidence in court. The prosecution must have been satisfied with the strength of the report (P13) to support it's case without calling for personal attendance of the expert. After reading the report (P13) particularly paras. 3 and 4 thereof, I agree with the learned magistrate and defence counsel that the report is just a bare opinion, too brief and no explanation or grounds given as to how he came to such an opinion. It is insufficient to assist the magistrate in determining whether the exh. P3 was in fact relates to an illegal lottery. In *Ong Yap Chang v. Public Prosecutor* [1962] 28 MLJ 46, Adams J had ruled that:

> as the expert had given no reasons for his conclusions, the learned Magistrate was in no position to judge whether the evidence of the expert was in fact acceptable. There was therefore no evidence on which he came to his finding that the exhibits were in fact a record of stakes. Appeal must therefore be allowed.

In a recent case *Public Prosecutor v. Tan Kian Ho* [1998] 4 J Cr, Tee Ah Sing J. in dealing with an appeal against acquittal by the public prosecutor for an offence under s. 4A(a) Common Gaming Houses Act 1953, had also made the following ruling:

> The learned Magistrate had correctly determined that the evidence of PW6, should be rejected, as he had given bare opinions without condescending upon the reasons for his opinion, in totality his evidence as a gaming expert was wanting.

In that case, the appeal was dismissed.

The learned DPP also argued that since the expert report (P13) was tendered and served on the respondent under s. 399 CPC, then the expert is not required to be called to testify in court. He also argued that, under s. 91, Evidence Act 1950, any oral evidence by the expert should be excluded in view of the report tendered earlier. Thus there is no necessity to call the expert in this case.

As I have stated earlier, it is the duty of the prosecution in this case, to prove its case beyond a reasonable doubt at the end of the prosecution's case before defence can be called. The burden is on the prosecution, not on the court or the accused (respondent). If the prosecution feels that the report is wanting, then attempt must be made to call the expert to give evidence in court and to elicit the reasons for the opinion he had given. But in this case the prosecution chose not to do that, instead it just relied on the report (P13) alone. On this issue, I would like to quote a passage from the judgment of Thomsom J (as he then was) in *Public Prosecutor v. Lee Ee Teong* [1953] MLJ 244, in which he said:

> I know, and the Magistrate knows, all about the 1000 character lottery; so for that matter do the majority of the adult inhabitants of this country. There is not the slightest room for doubt that it is a lottery within the meaning of the Common Gaming Houses Enactment. Unfortunately however, it is not open to any judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction.

The fact that the expert report (P13) was served on the respondent ten days before the trial in compliance with s. 399 CPC and the respondent as well the court did not object to it and did not call the expert to give evidence in court, does not relieve the prosecution of the burden to establish its case beyond a reasonable doubt at the close of the prosecution's case. It is not the duty of the court or the accused person to help out evidence for the prosecution. The prosecuting officer should be wise enough to appreciate whether the particular report by the gaming expert has fulfilled the

requirements of the law in order for it to be admitted and accepted by the court. He cannot expect the court or the defence counsel to assist him in this matter, at the expense of the accused person. Based on all the cases cited earlier on this issue, I can safely conclude that expert evidence is part and parcel of the prosecution's case, so it is the duty of the prosecution to ensure that the expert evidence, either oral or documentary (in the form of a report) carries sufficient weight to assist the prosecution, in establishing it's case beyond a reasonable doubt at the end of the prosecution case. Eventhough, the prosecution had served the expert report (P13) on the respondent pursuant to s. 399(1) CPC, the prosecution was not precluded from calling the gaming expert to prove its case in the ordinary way, if it felt that the report itself (P13) was insufficient to establish its case beyond a reasonable doubt. In *Mohammed bin Hassan v. Public Prosecutor* [1998] 2 CLJ 170, the Federal Court held as follows:

> With respect, we did not consider that the prosecution was precluded from calling PW3, the chemist (the marker of the report exh P11), to prove a case in the ordinary way solely because it had served a copy of the report on the accused prior to the commencement of the trial pursuant to s 399(i) of the CPC. In other words, service of a copy of the report on the accused pursuant to the said s 399(i) is, in itself, no bar to the prosecution from subsequently calling the maker of the report as a witness instead of relying on production of the report as substantive evidence. Section 399(i) merely renders permissible the admission in evidence the reports of the categories of persons set out in sub-s (ii) thereof (PW3 belonged to one of such categories) without calling the makers as witness provided that the precondition of service of copies of the reports as laid down in the said s. 399(i) had been duly complied with. It merely enables the report to be used but does not make it obligatory for the prosecution to make the report substantive evidence simply because it had served a copy thereof upon the accused in pursuance of the said s. 399(i).

In the same case (*Mohammed Hassan*) the Federal Court had also held that:

> in point of law, where a maker of a report is called as a witness, there is nothing to prevent him from tendering his report for the purpose of corroborating his own evidence.

In *Saw Thean Teik v. R* [1953] MLJ 124, which dealt with s. 427 of the CPC (Cap 21) which was in *pari materia* with s. 399 of our present CPC (except for one category of persons in sub-s. (ii), Spencer Wilkinson J said (at p. 125):

> When a Medical Officer is giving oral evidence then, of course, any notes which he may have made at the time of his examination, he can refer to refresh his memory. Moreover, if his report is made at about the time when his examination took place, the report could be put in, not as primary evidence of its contents but to corroborate the oral evidence already given under section 157 of the Evidence Ordinance.

And (at p. 125) he went on to say:

> Technically, however, it is wrong for a witness in a criminal case to produce a report as a substitute for oral evidence. Clearly if the witness is in the witness box, the best evidence is his oral evidence as to what he saw or discovered (see s. 60 of the Evidence Ordinance). Where witnesses of this kind are brought to Court, their reports should only be used, if at all, either to refresh memory or as corroboration.

In the light of the above authorities, it is my finding that service of a copy of the expert's report (P13) on the respondent pursuant to s. 399(i) CPC was, in itself, no bar to the prosecution from subsequently calling the maker of the report as a witness instead of relying solely on the production of the report as substantive evidence. In that case, the expert report (P13) was no more than corroboration evidence affirming the witness's oral evidence on his findings on the relevant exhibits. In the circumstances, the issue relating to s. 91 of the Evidence Act 1950, as raised by the learned DPP, does not arise. The same issue was also raised in *Mohammed Hassan*'s case (*supra*) where Chong Siew Fai CJ (Sabah and Sarawak) had ruled that:

> In the light of the above view that we take, it is unnecessary to discuss and rely on ss. 91 and 92 of the, Evidence Act 1950.

**Conclusion**

For the above reasons, I am satisfied that there is no merit in this appeal. Thus the appeal by the learned DPP is dismissed. The order of acquittal and discharge by the learned magistrate dated 25 May 2000 is hereby confirmed.